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SERVICE DATE – APRIL 20, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 6 (Sub-No. 497X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN BENTON COUNTY, MINN.

Decided: April 19, 2018

This decision removes a Section 106 condition imposed in this proceeding pursuant to the National Historic Preservation Act, 54 U.S.C. § 306108 (NHPA), and vacates a previously issued Notice of Interim Trail Use or Abandonment (NITU).

BNSF Railway Company (BNSF) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 1.75-mile line of railroad located between milepost 0.0 and milepost 1.75 in Benton County, Minn. (the Line). Notice of the exemption was served and published in the Federal Register on December 8, 2017 (82 Fed. Reg. 58,045). The exemption became effective on January 9, 2018.

Requested Removal of the Section 106 Historic Preservation Condition

By decision served on January 5, 2018, the Board imposed a historic preservation condition under Section 106 of the NHPA, recommended by the Board's Office of Environmental Analysis (OEA). The historic preservation condition requires BNSF to (a) retain its interest in and take no steps to alter the historic integrity of all historic properties including sites, buildings, structures, and objects within the project right-of-way (the Area of Potential Effect) that are eligible for listing or listed in the National Register of Historic Places (National Register) until the Section 106 process has been completed; (b) report back to OEA regarding any consultations with the Minnesota State Historic Preservation Office (SHPO) and the public; and (c) not file its consummation notice or initiate any salvage activities related to abandonment (including removal of tracks and ties) until the Section 106 process has been completed and the Board has removed this condition.

In a Supplemental Final Environmental Assessment dated April 4, 2018, OEA states that BNSF forwarded to the Board a letter from the SHPO, dated March 22, 2018, indicating that, based on additional information provided by BNSF, the Line does not retain sufficient integrity to be eligible for listing in the National Register. Thus, OEA states that it is the SHPO's opinion that no historic properties would be affected by the proposed abandonment. Based on this comment, OEA has determined, pursuant to the Section 106 regulations of the NHPA, and following consultation with the SHPO and the public, that the proposed abandonment would

have no effect on historic properties listed in or eligible for listing in the National Register. OEA therefore recommends that the Board remove the Section 106 condition.

Based on OEA's recommendation, the Section 106 historic preservation condition will be removed.

Requested Withdrawal of the NITU and the Public Use Condition

By decision and notice of interim trail use or abandonment served on March 22, 2018 (March 2018 decision), this proceeding was reopened, and a 180-day period was authorized for Benton County, Minn. (the County) to negotiate an interim trail use/rail banking agreement with BNSF for the right-of-way pursuant to the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). The NITU negotiating period expires on September 18, 2018. The March 2018 decision also permitted public use negotiations for the right-of-way under 49 U.S.C. § 10905 for a 180-day period from the effective date of the abandonment exemption (until July 8, 2018).

On March 30, 2018, the County filed a letter stating that it no longer has an interest in the Line. As such, the County asks to withdraw its February 16, 2018 requests for a NITU and public use condition, which were granted in the March 2018 decision.

The County's request will be granted in part and denied in part. Under the Trails Act, interim trail use negotiations are voluntary and consensual between the railroad and the trail sponsor. Rail Abans.—Use of Rights-of Way as Trails, 2 I.C.C.2d 591, 598 (1986); Nat'l Wildlife Fed'n v. ICC, 850 F.2d 694, 699-702 (D.C Cir. 1988). Further, the Board's role under the Trails Act is limited and largely ministerial. See Citizens Against Rails to Trails v. STB, 267 F.3d 1144 (D.C. Cir 2001). Here, the County no longer consents to continued negotiations with BNSF for the right-of-way. Therefore, it would be inappropriate to keep the NITU in place. Accordingly, the NITU issued in the March 2018 decision will be vacated.

The County's request to vacate the public use condition, however, will be denied. As noted in the March 2018 decision, a public use condition is not imposed for the benefit of any one potential purchaser but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. If the County no longer wishes to negotiate with BNSF under the public use condition, it need not do so; the condition, however, will remain in place for the benefit of any other interested person who may wish to do so during the specified time frame.

This decision, and the proposed abandonment if implemented as conditioned, will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proceeding is reopened.
2. The Section 106 historic preservation condition imposed in the January 5, 2018 decision is removed.
3. The NITU issued in the March 2018 decision is vacated, effective on the date of service of this decision.
4. The public use condition imposed in the March 2018 decision shall remain in effect until July 8, 2018.
5. This decision is effective on its date of service.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.